

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 6429 of 2002****For Approval and Signature:****HONOURABLE MR.JUSTICE H.K.RATHOD**

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Whether Reporters of Local Papers
1 may be allowed to see the
judgment ?
2 To be referred to the Reporter or
not ?
3 Whether their Lordships wish to see
the fair copy of the judgment ?
Whether this case involves a
substantial question of law as to
4 the interpretation of the
constitution of India, 1950 or any
order made thereunder ?
5 Whether it is to be circulated to
the civil judge ?

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RAJKOT DISTRICT PANCHAYAT - Petitioner(s)
Versus
VINOD DHANJIBHAI VIRPURIA - Respondent (s)

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Appearance :

MR HS MUNSHAW for Petitioner(s) : 1,
MR PANKAJ R DESAI for Respondent (s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD**Date : 19/01/2006**

ORAL JUDGMENT

Heard learned advocate Mr. H.S. Munshaw for petitioner and Mr. P.R. Desai for respondent. In this petition under Article 227 of Constitution of India, petitioner has challenged award made by labour court, Rajkot in Reference No. 351 of 1990 dated May 17, 2002 wherein labour court, Rajkot has granted reinstatement with continuity of service with 50% back wages for intervening period. Initially, this Court issued rule and granted ad-interim relief subject to compliance of section 17B of ID Act, 1947 from date of award of labour court and it was clarified that it was open for petitioner to reinstate workman rather than paying idle wages. Affidavit in reply is filed by respondent workman.

Learned advocate Mr. Munshaw appearing for petitioner has raised contention that this respondent was appointed against permanent vacant

post as daily wager by order dated 1st April, 1984 till regular employee is appointed on vacant post. He also submitted that on 15th June, 1990, one Lakhiyatar Chhotabhai Shamjibhai, regularly selected candidate, was appointed against vacant post, therefore, service of present respondent was terminated. He submitted that the appointment of respondent was made on contingency or with stipulation that the moment regularly selected candidate is available, service of respondent would stand terminated. Therefore, it is his submission that section 2(oo) (bb) of ID Act, 1947 is applicable, therefore, petitioner is not duty bound to comply with provisions of section 25F of ID Act, 1947 as such termination is not amounting to retrenchment within the meaning of section 2(oo). He further submitted that now post is not available and, therefore, petitioner cannot be directed to reinstate the respondent in service. Therefore, award of reinstatement is required to be quashed. Alternatively, as regards

50% back wages granted by labour court for intervening period, he submitted that the award of back wages is on higher side and same is required to be quashed or reduced. Therefore, in short, his submission is that labour court has erred in coming to conclusion that section 25F has been violated. Except these submissions, no other submissions were made by Mr. Munshaw before this Court. No decision has been cited by him before this Court.

On the other hand, learned advocate Mr. P.R. Desai appearing for respondent submitted that in order of appointment given to respondent, no such stipulation or contract is specifically mentioned by petitioner. Contingency cannot be considered to be stipulation in contract of service. Contingency itself is uncertain, therefore, it cannot be termed or considered as specific stipulation, therefore, according to him, 2(oo) (bb) is not applicable to case of respondent. He

also submitted that no such submissions were made by petitioner before labour court and no such contentions were raised by petitioner before labour court and petitioner cannot be permitted to raise such contentions for the first time before this Court. He further submitted that the provisions of section 2(oo) (bb) came into effect by Amendment Act No.49 of 1984 with effect from August 18, 1984 whereas date of appointment of respondent is 1st April, 1984 and on that day, provisions of section 2(oo) (bb) were not there in the ID Act, 1947, therefore, contention of Mr. Munshaw as regards applicability of sec. 2(oo) (bb) of ID Act, 1947 cannot be accepted. According to him, service of workman was terminated on 23rd January, 1990. Workman immediately raised industrial dispute in 1990 and reference made by appropriate Government to Labour Court remained pending waiting for adjudication for a period of about 12 years and for pendency of reference for such a long period,

it cannot be said that respondent was responsible. According to him, Respondent was not at all fault for such delay in adjudication of reference by labour court. According to him, petitioner was remaining absent on number of occasions and case was reopened earlier by labour court on that count and thus, petitioner is responsible for delay in adjudication of reference to a great extent. According to him, though there is no fault on the part of respondent for such delay, labour court has taken it into consideration while considering the aspect of back wages. According to him, though it was deposed by workman that he remained unemployed during intervening period and was not gainfully employed, labour court, considering fact that one would not sit idle and one would not remain unemployed for such a pretty long period, labour court curtailed award of back wages and granted only 50% of back wages though assertion of respondent about his unemployment

during intervening period was not controverted by petitioner and, therefore, according to his submission, award of 50 per cent back wages is also proper, just and reasonable and prayed that this court may not interfere with the same and reject petition as a whole since petitioner is not able to point out any infirmity or irregularity or jurisdictional error committed by labour court while passing award in question.

I have considered submissions made by learned advocates for parties. I have perused entire record of petition. Appointment order dated 1st April, 1984 was issued in favour of respondent in view of transfer of one Shri P.D. Waghela, Peon on vacant post wherein respondent was appointed as daily wager on daily wage of Rs.12.20 ps. And respondent continued in service till the date of termination 23rd January, 1990. Submission made by Mr. Munshaw that in view of the appointment of one Lakhiatar made by order dated 15.6.1990,

service of respondent was terminated, is required to be noted. If the date of termination of service of respondent is considered keeping in view said submission, then, date of termination of service of respondent is 23.1.1990 whereas date of appointment of said Lakhiatar is 15.6.90. Thus, it is clear that on the date of termination of service of respondent, nobody was appointed on that post and much prior to the appointment of said Lakhiatar in June 1990, service of respondent was terminated on 23.1.1990. Therefore, that submission of Mr. Munshaw before this Court also would not justify the action of petitioner to terminate the service of Respondent. Such termination of service of is, therefore, illegal and also contrary to contingency specifically mentioned in the order of appointment. Apart from that, before labour court, one witness of petitioner was examined vide Exh. 42. He admitted before labour court that the post on which respondent was working is

vacant at present. Looking to this evidence vice Exh. 42 Where is the question of appointment of regularly selected candidate in place of respondent when post is found to be vacant as per evidence of witness for petitioner itself ? Respondent was continued in service right from the date of his appointment till the date of termination of his service on 23rd January, 1990 and completed 240 days continuous service in each year and also preceding 12 months from date of termination. Labour court has set aside order of termination of service of respondent also on the ground of non compliance of provisions of section 25F of ID Act, 1947 and it is not case of petitioner that it was complied with but it is case of petitioner that petitioner is not required to comply with it in view of specific stipulation mentioned It is not case of petitioner that it has paid one month notice pay or issued one month notice and retrenchment compensation to respondent. Shri Jayantibhai

Popatbhai examined by petitioner at Exh. 42 admits in his evidence that as per Exh. 39, presence register, workman has completed more than 240 days' continuous service. He also admits that respondent was working in dispensary and that dispensary is also continuing and the post of peon is also found to be vacant. In view of these facts, labour court has appreciated oral as well as documentary evidence and has come to the conclusion that termination of respondent by order dated 23.1.1990 is amounting to retrenchment and section 2(oo) (bb) of ID Act, 1947 is not applicable because at the relevant time, this section was not brought into law and, therefore, termination of respondent is amounting to retrenchment. Though no such contention was raised by petitioner before labour court in respect of applicability of sec. 2(oo) (bb) of ID Act. It is not in dispute that section 25F has not been complied with and then natural consequence is that the termination order is void

ab initio. Therefore, respondent workman is entitled for reinstatement with continuity of service and labour court has rightly set aside action of termination of service of workman and has rightly appreciated that petitioner being public body, should not be much burden with back wages and has, therefore, rightly granted only 50 per cent of back wages though gainful employment of workman for intervening period was not proved by petitioner before labour court. As regards back wages, labour court was right in exercising discretionary power and, therefore, according to my opinion, no interference is warranted in the impugned award

I have considered entire record. According to my opinion, labour court has not committed any error in passing impugned award. Finding given by labour court are based on legal evidence and are not baseless or perverse. Labour Court has applied mind and has given quite cogent and

convincing reasons in support of its conclusion. Learned advocate Mr. Munshaw is not able to point out any jurisdictional error and/or irregularity or infirmity in the award in question. This court is having very limited jurisdiction under Article 227 of Constitution of India as decided by apex court in Laxmikant Revchand Bhojwani and another versus Pratapsing Mohansingh Pardeshi, (1995) 6 Supreme Court Cases 576. Relevant observations made by Supreme Court in para 9 of said decision are reproduced as under:

"9. xxx xxx The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes."

Therefore, considering this fact, according to my opinion, no interference is required, therefore, this petition is required to be dismissed.

In result, this petition is dismissed. Rule is discharged. Interim relief granted earlier shall stand vacated. No order as to costs.

{H.K. Rathod, J.}

Vyas